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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL J. JONES, JR.,

Plaintiff,

v.

21 Civ. 2145 (MKV)

NEW YORK CITY DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Telephone Conference

New York, N.Y.
November 18, 2021
2:30 p.m.

Before:

HON. MARY KAY VYSKOCIL,

District Judge

APPEARANCES

MICHAEL J. JONES, JR., Pro Se Plaintiff

NEW YORK CITY LAW DEPARTMENT
Attorneys for Defendant
BY: CAROLYN KRUK

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1 (The Court and all parties present remotely)

2 THE DEPUTY CLERK: Good afternoon, your Honor. We're
3 here in the matter of 21 Civ. 2145, Jones v. New York City
4 Department of Corrections, *et al.*

5 Plaintiff, please state your name for the record.

6 MR. JONES: Me?

7 THE DEPUTY CLERK: Yes, sir.

8 MR. JONES: Michael Jones.

9 MS. KRUK: Hi. Good afternoon. Carolyn Kruk with the
10 New York City Law Department, for the defendant.

11 THE COURT: All right. Good afternoon, Ms. Kruk.

12 Do we have the plaintiff?

13 MS. KRUK: Yes. His voice is a little faint.

14 Mr. Jones, if you could speak up a little, please.

15 MR. JONES: Michael Jones, 18A1781.

16 THE COURT: Oh, good afternoon, Mr. Jones. I'm sorry.
17 I did not hear you.

18 MR. JONES: All right. Good afternoon, your Honor.

19 THE COURT: All right. Good afternoon.

20 And we have our court reporter with us, Ms. Robles.
21 You can hear clearly enough?

22 THE REPORTER: Yes, Judge. He's very faint, though.

23 THE COURT: All right. We are here for really your
24 initial conference with me in this case in which Mr. Jones is
25 alleging certain violations of his constitutional rights while

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1 he was detained on Rikers Island. There have been several
2 orders issued by the chief judge, two different chief judges,
3 of this district, the first authorizing Mr. Jones to proceed
4 *pro se* and *in forma pauperis*, and thereafter Judge Swain took
5 over as chief judge, and she directed that an amended complaint
6 be filed. That has happened. The case was then assigned to
7 me.

8 As I say, this is our initial conference in this case,
9 and we are proceeding remotely, largely because of the COVID-19
10 pandemic but also for the convenience of everybody and to save
11 expense and money.

12 Having said that, this is a formal court proceeding as
13 if we were in open court. We do have a court reporter with us,
14 and she will prepare a transcript of what happens at today's
15 proceedings, and that will be available to the parties.

16 I do remind you that you cannot record or rebroadcast
17 today's proceedings, and I remind you as well that you should
18 please identify yourself for the record when you speak, and you
19 need to speak clearly enough so that I can hear you and the
20 court reporter and the other parties can hear you. Please
21 don't interrupt each other. I'll give everyone an opportunity
22 to speak.

23 Now, soon after this case was reassigned to me, I
24 issued an order. Mr. Jones, it's known as a *Valentin* order
25 after the name of the case that gave rise to this obligation on

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1 the part of the city. In that order, I directed certain
2 things, including that the city provide you with information
3 calculated to help you identify who the individual defendants
4 are whom you are trying to name. They've given you some
5 information, but we'll talk in a minute about that.

6 The order that I signed also asked the city -- the
7 individuals and the city to waive service of the summons in
8 this case. So let me start with that and ask, Ms. Kruk, have
9 you, in fact, done that?

10 MS. KRUK: Yes, your Honor. The city, as well as the
11 two individual defendants, it's the chief, Hazel Jennings, and
12 former DOC commissioner, so I've waived, and all three have
13 filed an answer to the second amended complaint. It's simply
14 the Jane and John Doe that remain unidentified as of today's
15 date.

16 THE COURT: Now let's turn, then, to the order that
17 the city provide information with respect to the identity of
18 these defendants. There's been some back and forth. I really
19 don't want to hear quibbling about what went on and whether
20 there was or there wasn't cooperation. What I would like to
21 know from the city is what have you done to try to identify
22 these individuals and what more do you need to identify them,
23 or is every individual who belongs in the case in the case?

24 MS. KRUK: Your Honor, from our perspective, we have
25 made good faith efforts to identify the two individuals. We've

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1 provided a medical -- Mr. Jones' medical record and a letter
2 that listed out the over 50 occasions where a mental health or
3 medical professional interacted with Mr. Jones and asked for
4 additional information to help identify the two individuals at
5 issue. He did provide some information, but unfortunately, it
6 wasn't sufficient to narrow their identity.

7 Then your Honor granted me permission to serve
8 identification interrogatories on the plaintiff, and I did so
9 on August 25, 2001. I did not receive a response, so I sent
10 another copy of it, of the same interrogatories, on October 18,
11 2001. And as of today's date, I have still not received a
12 response to those interrogatories. So, unfortunately, at this
13 juncture, I haven't been able to, without additional
14 information, especially, that might focus the date of issue of
15 the events, so I haven't been able to identify. So at this
16 juncture I would respectfully request that we -- that you
17 relieve the Law Department from its obligation to comply with
18 the *Valentin* order that we proceed into discovery, and then, of
19 course, if discovery might identify or result in the
20 identification of additional relevant defendants, we can
21 certainly raise it at that time. But we do have the city and
22 two named individuals in the case, so I think we could
23 effectively proceed with the defendant as identified.

24 THE COURT: All right. I saw some reference in
25 correspondence -- I'll turn to you in a minute, Mr. Jones -- I

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1 saw some correspondence to the effect that the city was seeking
2 dismissal. You have not filed a motion, right?

3 MS. KRUK: That's correct.

4 THE COURT: And you're not intending to do so at this
5 time?

6 MS. KRUK: That's correct.

7 THE COURT: Mr. Jones, have you heard everything that
8 Ms. Kruk told me? First of all, have you received these
9 documents that were served on you by the city asking you
10 certain questions -- asking you in writing to answer certain
11 questions helping to identify these individuals?

12 MR. JONES: Yes, I did receive multiple letters. The
13 first time I responded with the Jane officer's name, so then I
14 believe that I'm talking about the same letters that the
15 defendant is speaking about. I received a second letter. I
16 got more information about the officer that I was speaking
17 about, and I was able to tell what her name, what her name
18 happens to be, and I was also able to describe how she look,
19 her height, and I was also able to give an approximation of the
20 dates these events happened because the city also gave me
21 medical records and the placement sheets where I was housed at.
22 So I said approximately between this date and this date these
23 things happened, and I gave them the name of the officer, or
24 one of the officers.

25 THE COURT: You gave them a name, sir?

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1 MR. JONES: Say that again.

2 THE COURT: You gave them a name?

3 MR. JONES: Yes, ma'am.

4 THE COURT: Is the name that you gave them the two
5 individuals who are now listed, Cynthia Brann --

6 MR. JONES: Those are two of the names that was listed
7 before, but I was asked to identify Jane and John Doe.

8 THE COURT: Yes.

9 MR. JONES: I wasn't able to identify John Doe. I was
10 able to obtain Jane Doe's name, and her name is Uniberg. She
11 was a steady officer in the housing facility I was housed in.

12 THE COURT: All right. Ms. Kruk, do you know this
13 person? Have you looked into the identity of this person?

14 MS. KRUK: I have, your Honor, and that individual,
15 there is a Bernadette Uniberg, who is a correction officer at
16 the DOC. She was not and never has been, however, assigned to
17 the West Facility, which is the location where plaintiff
18 alleges the violations took place. So if he's certain about
19 the location and that it wasn't at a different facility, then
20 it doesn't match up. But, of course, I can certainly, you
21 know, identify her and an address for service if plaintiff does
22 want to proceed against her, but I did want to flag the
23 location of her assignment does not seem to coincide with
24 plaintiff's allegations.

25 MR. JONES: Can I say something, your Honor?

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1 THE COURT: Yes, Mr. Jones. I was going to say, is
2 there something you want to say? Go ahead.

3 MR. JONES: Maybe because -- maybe she's been
4 reassigned, but during the time that I was in West Facility,
5 that was the officer. Her name was Ms. Uniberg. I didn't
6 remember at the time, but I spoken to other inmates who was
7 housed there with me, and they all had the same complaint
8 against her. Brandon -- and Tyrique Hill are also two other
9 cases that should have been civil court -- that are being
10 handled in civil court, and all of us have identified Uniberg
11 as the officer that was the officer.

12 THE COURT: All right. So here's where we're at,
13 Mr. Jones. You have the right at this stage, if you were
14 confident, to name this person in an amended pleading. We'll
15 get the forms and we'll have them sent to you, and you have the
16 right to amend what you've previously filed to just identify
17 Jane Doe as Ms. Uniberg.

18 MR. JONES: Yes, ma'am.

19 THE COURT: Ms. Kruk will provide the information for
20 you to arrange to have that complaint served on her.

21 Although, Ms. Kruk, I would request -- I'm going to
22 enter an order requesting that you waive service of the summons
23 and that --

24 MS. KRUK: That's fine.

25 THE COURT: -- you accept. You agree to accept?

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1 MS. KRUK: Yes, your Honor.

2 THE COURT: So, Mr. Jones, we'll get you the form, and
3 you can amend it to say that you are identifying Jane Doe as
4 this individual.

5 MR. JONES: Yes, ma'am.

6 THE COURT: The next step, then, is that your case
7 proceeds to what's called discovery where you get to serve
8 requests for information on the city and on the individual
9 defendants. They in turn get to serve information requests on
10 you, and maybe it can help narrow what the issue is here. At
11 some point, depending on the information as it gets developed,
12 the city may then at that point make a motion or it may not,
13 but that's what happens in a civil case, that the parties move
14 forward and start exchanging information.

15 So that's where we're at. You can amend your
16 complaint to add this individual without any assurance that
17 there won't be a motion down the road if discovery reveals some
18 kind of an error, but on the other hand, you may develop
19 information that makes it very clear that this is a properly
20 named party as well.

21 Now, the only issue that I still have open to talk to
22 you about is you've requested repeatedly that the Court appoint
23 a lawyer for you. And I understand, Mr. Jones, the difficulty
24 that you have in trying to prosecute your case from prison.
25 However, there is not a constitutional right to have a lawyer

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1 appointed for you in a civil case as opposed to in a criminal
2 case where you're a defendant.

3 Having said that, the Court does try to see if there
4 are ways that we can help an individual, and I'd like to try to
5 see if there is any way I can do that. But I need to -- before
6 I can even consider it, there are certain conditions that have
7 to be met. One is that I have to understand what steps you've
8 taken to try to find a lawyer.

9 Have you reached out, for example, to any of the
10 organizations that exist? The *pro se* office could give you a
11 list of them, various organizations that could represent you in
12 this case. Have you tried to do that?

13 MR. JONES: I didn't write -- I didn't write the *pro*
14 *se* office, but I wrote a few lawyers because I had access to
15 this book called the *Lawyer's Diary* where it had all the
16 addresses to different offices.

17 THE COURT: Yes.

18 MR. JONES: The lawyers that I written, they said they
19 would not be interested in taking my case at this time.

20 THE COURT: OK.

21 MR. JONES: Also, I would like to just try to add into
22 the point that right now I'm in protective custody, so I'm
23 locked in my cell 23 hours a day.

24 THE COURT: Why are you in protective custody, sir?

25 MR. JONES: Bad choices I made as a teenager. I was

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1 once a gang member.

2 THE COURT: I see.

3 MR. JONES: So being that I'm not involved in that
4 lifestyle anymore, being in prison, there's no way you could
5 just walk away from it.

6 THE COURT: All right. I understand, sir.

7 All right. But there's nothing I can do about that.
8 I was asking simply to see --

9 MR. JONES: I have no access to law library.

10 THE COURT: Yes, I understand. I understand the
11 issues.

12 MR. JONES: For materials, you request materials, they
13 don't always bring them to us.

14 THE COURT: I understand.

15 MR. JONES: I'm going to have to do it from my cell.
16 And me requesting certain information and stuff is like I'm
17 rolling the dice of maybe I'll get the answer, maybe I won't.

18 THE COURT: Yes, I understand, sir.

19 So let me just talk to you about the final issue in
20 terms of my even trying to recommend or see through a way to
21 have you have counsel. The final factor is the merits of your
22 case. Judge Swain, in her order, pointed out to you a
23 fundamental problem with the claim that you are bringing, which
24 is the following: You named the city as a defendant in this
25 case, and yet again in your most recent letter in which you're

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1 asserting your claims, you say that the city's policy was
2 violated by the Department of Corrections, which means that
3 you're saying the city does not have a policy, which is what
4 you would have to prove in order to prevail against the city.

5 Now, the thing, Ms. Kruk, that I find a little
6 perplexing is you're telling me the city is not seeking to
7 dismiss at this stage, right?

8 MS. KRUK: I mean --

9 THE COURT: I'm asking Ms. Kruk.

10 Go ahead.

11 MS. KRUK: I guess it was in anticipation of
12 Ms. Uniberg being added on to the case and seeing what his
13 amended complaint looks like, and then I would certainly
14 reassess at that point.

15 THE COURT: All right.

16 MR. JONES: The Board of Corrections has a policy
17 states that administration segregation is not permissible in
18 this -- in this city. The Board of Corrections works for the
19 city, and the Department of Corrections works for the city.

20 THE COURT: Yes, but the point is, sir, you're saying
21 that the policy is not to violate people's constitutional right
22 but that individuals disobeyed that policy. You're not
23 alleging, as you would have to in order to recover against the
24 city, that there is a citywide policy that is violative of your
25 constitutional rights. That's the issue that's going to be

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1 raised.

2 Now, as I said, I'm going to give you leave to amend
3 one more time to address this and to add this new individual
4 person. I also suggest to you that you need to try to speak to
5 the *pro se* office at the court, make a phone call, and ask them
6 if they can put you in touch with organizations that provide
7 assistance to people like you in civil cases.

8 MR. JONES: I don't have access to do that.

9 THE COURT: You can't make a phone call?

10 MR. JONES: No. I'm -- I'm not able to just pick up
11 the phone and call the courts.

12 THE COURT: I know you can't just pick up a phone
13 whenever you want, but is there no ability to make arrangements
14 to have access to a telephone?

15 MR. JONES: We have counselors that supposed to give
16 us legal calls, but if the Court doesn't order my counselor to
17 give me a legal call, she's not going to give me a legal call.

18 THE COURT: OK. I will enter an order that you be
19 permitted. Who's your counselor?

20 MR. JONES: Her name --

21 THE COURT: I'm sorry, sir, you cut out.

22 MR. JONES: Her name is Ms. McDaniels.

23 THE COURT: All right. I'll enter an order that
24 Ms. McDaniels facilitate a call by you to the *pro se* office in
25 order that you can ask them for the identity of organizations

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1 that provide pro bono, meaning for free, legal assistance, and
2 that she also facilitate phone calls by you to those
3 organizations.

4 MR. JONES: Yes, ma'am. I appreciate that.

5 THE COURT: I will also undertake on my own to give
6 some consideration to whether there are any other means to try
7 to facilitate representation. But I have to tell you that a
8 critical component, in terms of whether people will take your
9 case and whether I can even impose on someone to take your
10 case, is the merits.

11 I need you to file that amended -- you can do it in
12 handwriting, just like you've done before -- an amended
13 pleading in which you add this other individual, you describe
14 what the role of each of these individuals was. And you think
15 about what I'm telling you about in order to assert a claim
16 against the city, you need to allege some kind of a citywide
17 policy that violates your constitutional rights. It's not a
18 policy if you say the city had a policy that I cannot -- this
19 cannot happen, but it happened anyway. That's not a policy.
20 That's a violation of a good policy by somebody else.

21 Do you understand what I'm explaining?

22 MR. JONES: Not -- not fully. I don't fully
23 understand what you're saying. I'm just being honest. I
24 understand somewhat, but I still don't get it because I don't
25 understand the law. To my knowledge, that if -- you can't sue

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1 the city because they're going to say they're acting in color
2 of the state, so that's why I sued the city.

3 THE COURT: No, but the city is saying -- to sue the
4 city, the law says you have to allege a pattern or a practice
5 by the city that is unconstitutional, and yet in your letter
6 you say the policy of the city is that there should not be
7 administrative segregation. So the policy of the city is a
8 good policy that doesn't violate your constitutional right,
9 according to what you wrote in your letter. It's just that
10 some individual people, you're saying --

11 MR. JONES: I understand.

12 THE COURT: OK.

13 MR. JONES: The violation was them violating due
14 processing and placing me in there without -- without an option
15 to challenge me being in isolation. They had me in that
16 administrative segregation, and they didn't have no way for me
17 to challenge getting out of it. That's the violation.

18 THE COURT: All right. Well, if you're saying that
19 was the citywide policy, you need to make that clear in your
20 next complaint that you file.

21 MR. JONES: All right.

22 THE COURT: And then once I -- and you can add this
23 individual that you're talking about. Once I receive it, you
24 can send a copy of it to Ms. Kruk, because she has said that
25 she will accept service on behalf of the individual. We're not

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1 going to make you go through all the formalities.

2 Correct, Ms. Kruk?

3 MS. KRUK: Yes. I will need to conduct a
4 representation interview of her, but I will undertake that now
5 in anticipation of service.

6 THE COURT: So you send that, Mr. Jones, to Ms. Kruk,
7 and then once Ms. Kruk receives it and I receive it, I will
8 review it carefully to see if there is any way I can do more to
9 try to get counsel to help you, and she will review it to
10 decide whether she wants to make any kind of motion, which she
11 has not yet done.

12 MR. JONES: Yes, ma'am.

13 THE COURT: Then we will also, shortly after that, get
14 an order in place, if there is no motion practice, saying, OK,
15 now everybody can serve on each other requests for documents
16 and other information, which we call discovery. But that's
17 only if we get past this first stage. All right?

18 MR. JONES: Yes.

19 THE COURT: All right. Anything else from you,
20 Ms. Kruk?

21 MS. KRUK: No. Thank you, your Honor.

22 THE COURT: All right. Anything further, Mr. Jones?

23 MR. JONES: Just want to make sure I have a complete
24 understanding. I'm going to have to reamend the claim --

25 THE COURT: Yes.

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1 MR. JONES: -- add the officer that I just stated and
2 clarify what violations of my constitutional rights was being
3 violated. I have to make sure I'm clear on that?

4 THE COURT: Yes. But if you are going to try to sue
5 the city, the city is only liable if you can allege a pattern
6 and a practice that violates your constitutional rights.

7 MR. JONES: All right.

8 THE COURT: OK.

9 MR. JONES: Yeah, I think I can -- I think I
10 understand that.

11 THE COURT: Very good then. All right. Then we are
12 adjourned, and I wish everybody as good a rest of the day as
13 you can have.

14 And I thank our court reporter.

15 MS. KRUK: Thank you, your Honor.

16 THE COURT: All right. Thanks very much.

17 MR. JONES: Thank you.

18 THE COURT: Bye-bye.

19 (Adjourned)